

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8915 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes @

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

ATULBHAI BALABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioner

MR DP JOSHI, AGP for Respondent No. 1

MR AJ PATEL for Respondent Nos. 2 to 8

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/05/99

CAV JUDGEMENT

This petition under Article 226 of the Constitution raises the following question for consideration :-

"Whether the Gujarat Revenue Tribunal, constituted under the Bombay Revenue Tribunal Act, 1957, while exercising the powers of revision under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948, has the power to review its own decisions."

2. The facts giving rise to filing of this petition, as averred by the petitioners, are as under :-

The land in question situate in village Nikol, Taluka & District Ahmedabad City was held in the name of Bai Jadav i.e. the predecessor-in-title of the petitioners. In the year 1975, the Mamlatdar and Agricultural Land Tribunal, Ahmedabad initiated proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Tenancy Act"). After hearing the parties, the Mamlatdar & Agricultural Land Tribunal passed order dated 10.2.1975 fixing the purchase price. Respondent Nos. 2 to 8 (hereinafter referred to as "the respondents") filed an appeal before the Deputy Collector, Ahmedabad challenging the above order on 17.4.1995. By his judgment and order dated 29.1.1996, the Deputy Collector quashed and set aside the order of the Mamlatdar & ALT and remanded the matter. The petitioners filed revision application before the Gujarat Revenue Tribunal (hereinafter referred to as "the Tribunal" or "the Gujarat Revenue Tribunal") on 29.2.1996 under Section 76 of the Tenancy Act. After hearing the parties, the Tribunal delivered judgment and order dated 30.9.1997 allowing the revision application, setting aside the order of the Deputy Collector and restoring the order dated 10.2.1975 of the Mamlatdar & ALT, City Taluka, Ahmedabad. Thereafter, the respondents filed review application before the Tribunal under Section 17 of the Bombay Revenue Tribunal Act, 1957 (hereinafter referred to as "the Tribunal Act"). The Tribunal issued notice on the said review application and stayed implementation of its judgment and order dated 30.9.1997. The petitioners have, therefore, filed this Special Civil Application praying for writ of prohibition to restrain the Tribunal from entertaining, hearing and deciding the aforesaid review application purported to have been filed under

Section 17 of the Tribunal Act. The petitioners have also challenged the interim order dated 3.12.1997 passed by the Tribunal during pendency of the aforesaid revision application.

3. While issuing notice, this Court had granted ad-interim stay of further proceedings before the Tribunal and the same has been continued till disposal of this petition. The petition was heard at length for final disposal.

4. Before narrating rival contentions of the learned counsel for the parties, it would be necessary to refer to the relevant statutory provisions having a bearing on the controversy in the present petition. The relevant provisions of the Bombay Revenue Tribunal Act, 1957 are as under :-

Sub-section (1) of Section 9 of the Tribunal Act provides that the Tribunal shall have jurisdiction to entertain and decide appeals from and revise decisions and orders of officers not below the rank of a Collector or Deputy Commissioner in respect of cases arising under the provisions of the enactments specified in the first schedule. The said schedule does not include the Tenancy Act.

Sub-sections (2) and (3) of Section 9 empowers the Government to add to, amend or omit any of the entries in the first schedule.

Section 12 provides that nothing contained in this Act shall affect any powers or functions of the Tribunal which may be conferred by or under any other law for the time being in force to entertain and decide appeals, applications or revisions.

Section 13 provides that in exercising the jurisdiction upon it by or under this Act, the Tribunal shall have all the powers of a Civil Court for various specified purposes and for such other purposes as may be prescribed.

Section 14 empowers the President of the Tribunal, subject to the provisions of the Act and to the previous approval of the State Government, to make regulations for regulating the practice and procedure of the Tribunal.

Section 17(1) is required to be produced in its entirety and the same reads as under :-

"17. Review of orders of Tribunal -(1) The Tribunal may, either on its own motion or on the application of any party interested, and where the State Government is heard under section 15 of the application by that Government, review its own decision or order in any case, and pass in reference thereto such order as it thinks just and proper :

Provided that no such application made by any party shall be entertained, unless the Tribunal is satisfied that there has been the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of such party or could not be produced by him at the time when its decision was made, or that there has been some mistake or error apparent on the face of the record, or for any other sufficient reason:

Provided further, that no such decision or order shall be varied or revised, unless notice has been given to the parties interested to appear and be heard in support of such order.

Sub-section (2) of Section 17 provides for the period of limitation.

Sections 18 and 19 read as under :-

"18. Manner of executing orders passed by Tribunal.- All orders passed by the Tribunal shall be executed in the same manner in which similar orders, if passed by the State Government or other competent authority, as the case may be, could have been executed."

"19. Exemption from Court fees.- Notwithstanding anything contained in the Court-fees Act, 1970 (VII of 1970) or any corresponding law in force in any part of the State of Bombay, no court fee shall be levied on any appeal or application made to the Tribunal.

Provided that where the Tribunal exercises any powers or functions under any tenancy law or other special law and that law

provides for the levy of court fee on any appeal or application to the Tribunal, nothing contained in this section shall affect the provision for levy of such fee."

The Bombay Revenue Tribunal Regulations, 1951 are framed in exercise of the powers conferred by Section 14 of the Tribunal Act. Regulation 55 reads as under :-

"55. Tribunal to follow provisions of Civil Procedure Code in matters not provided for in these Regulations : The Tribunal shall, in any matter not provided for in these regulations follow the procedure, as far as it is applicable, laid down in the Code of Civil Procedure, 1908."

As far as the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 are concerned, the following two provisions are relevant :

Section 76 of the Tenancy Act.

"76(1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1957 an application for revision may be made to the Gujarat Revenue Tribunal constituted under the said Act against any order of the Collector except an order under Section 32P of an order in appeal against an order under sub-section (4) of Section 32G on the following grounds only:

- (a) that the order of the Collector was contrary to law, or
- (b) that the Collector failed to determine some material issue of law, or
- (c) that there was a substantial defect in following the procedure provided by this Act or that there has been failure to take evidence or error in appreciating important evidence which has resulted in the miscarriage of justice.

(2) In deciding applications under this Section, the Gujarat Revenue Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Gujarat Revenue Tribunal."

Section 78 of the Tenancy Act.

"78. (1) The Collector in appeal and the Gujarat Revenue Tribunal in appeal under section 75 and in revision under section 76 may confirm, modify or rescind the order in appeal or revision or its execution or may pass such other order as may seem legal and just in accordance with the provisions of this Act.

(2) The orders of the Collector in appeal or of the Gujarat Revenue Tribunal or of the State Government in appeal or revision shall be executed in the manner provided for the execution of the orders of the Mamlatdar and Tribunal under section 73."

5. At the hearing of the petition, the learned counsel for the petitioners made the following submissions :-

5.1 The Tribunal is constituted under the Tribunal Act. Although the Tribunal Act confers the power of review by virtue of Section 17 of the Tribunal Act, the said power is available only when the Tribunal exercises jurisdiction in respect of cases arising under the provisions of the enactments specified in the first schedule to the Tribunal Act. The Tenancy Act is not included in the first schedule to the Tribunal Act and, therefore, the Gujarat Revenue Tribunal, while exercising powers under the Tribunal Act, cannot deal with the cases arising under the Tenancy Act. It is only on account of the specific provisions of Section 76 of the Tenancy Act that the Tribunal is vested with the jurisdiction to decide the revision applications under the Tenancy Act and, therefore, the power of review conferred by Section 17 of the Tribunal Act is not available to the Gujarat Revenue Tribunal while exercising powers under Section 76 of the Tenancy Act.

5.2 While exercising the powers of revision under Section 76 of the Tenancy Act, by virtue of the provisions of Section 76(2) of the Tenancy Act, the Tribunal has to follow the procedure prescribed by the Rules made under the Tenancy Act. Section 76 of the Tenancy Act also provides that the Gujarat Revenue Tribunal in revision under Section 76 may confirm, modify or rescind the order in appeal or revision or in execution or may pass such other order as may seem legal and just in accordance with the provisions of the Tenancy

Act. Similarly, the orders of the Gujarat Revenue Tribunal in revision under the Tenancy Act are required to be executed in the manner provided for execution of the orders of the Mamlatdar & Agricultural Land Tribunal. Thus, while exercising powers of revision under Section 76 of the Tenancy Act, the Tribunal is not exercising any of the powers under the Tribunal Act and, therefore, the power of review conferred by Section 17 of the Tribunal Act is not available to the Gujarat Revenue Tribunal while deciding revision applications under Section 76 of the Tenancy Act. The Tribunal Act itself makes the distinction between the powers exercised by the Gujarat Revenue Tribunal under the Tribunal Act and the very same Tribunal exercising the powers under the Tenancy Act. Section 19 of the Tenancy Act throws light on this distinction.

5.3 Whenever the Legislature has thought it fit to confer powers of review upon the Gujarat Revenue Tribunal, it has provided so specifically and unequivocally, but the very fact that such power of review is not conferred on the Tribunal while exercising the revisional powers under the Tenancy Act is a clear indication that the Tribunal is not to have any power of review while deciding revision applications under the Tenancy Act. The Gujarat Revenue Tribunal while exercising the appellate powers under the provisions of Section 36 of the Gujarat Agricultural Land Ceiling Act, 1960 is vested with powers of review by virtue of the provisions of Section 36(3) of the said Act which confers upon the Tribunal all the powers of a civil appellate Court under the Code of Civil Procedure, 1908. In absence of a similar provision in the Tenancy Act, it is obvious that the Tribunal exercising the powers of revision under Section 76 of the Tenancy Act has no power of review.

5.4 The learned counsel for the petitioners relied on the following decisions of the Apex Court :-

1. AIR 1980 SC 1273
2. JT 1993 (3) SC 594
3. AIR 1972 SC 2523
4. AIR 1979 SC 1814
5. AIR 1980 SC 1461/674

6. On the other hand, Mr AJ Patel, learned counsel for respondent Nos. 2 to 8 (hereinafter referred to as "the respondents") submitted as under :-

6.1 While sub-section (1) of Section 9 confers

jurisdiction on the Tribunal to entertain and decide appeals from and revise orders of officers in respect of cases arising under the provisions of the enactments specified in the first schedule to the Act, sub-sections (2) and (3) of Section 9 empower the State Government to add to or omit any of the entries in the first schedule. Moreover Section 12 of the Act provides that nothing contained in the Act shall affect any powers or functions of the Tribunal which may be conferred by or under any other law for the time being in force to entertain and decide appeals, applications or revisions. Section 12 thus contains a provision which is in addition to the enactments specified in the first schedule. Hence, the order under review pending before the Tribunal was passed in accordance with the provisions contained in Section 9 read with Section 12 of the Act.

6.2 Moreover, Section 17 of the Act provides for review of orders of the Tribunal. The power to review its own decision cannot be confined to the decision rendered by the Tribunal only in respect of cases arising under the provisions of the enactments specified in the first schedule as Section 12 of the Act itself contemplates that the Tribunal may be conferred with the jurisdiction to hear appeals/revisions in respect of cases arising under the provisions of the other Acts as well. The Tenancy Act, Gujarat Agricultural Land Ceiling Act and Gujarat Devasthani Inams Abolition Act and similar other tenure abolition Acts confer upon the Gujarat Revenue Tribunal appellate and/or revisional jurisdiction. The revisional jurisdiction of the Tribunal in respect of cases under the Tenancy Act is conferred by the provisions of Section 76 of the Tenancy Act. The opening words in section 76(1) of the Act, therefore, clearly contemplate that the jurisdiction of the Gujarat Revenue Tribunal which was otherwise restricted by Section 9(1) of the Tribunal Act to the enactments in the first schedule stands expanded by the provisions contained in Section 76 of the Tenancy Act read with Section 12 of the Tribunal Act. This revisional jurisdiction under Section 76 of the Tenancy Act is thus clearly referable to Section 12 of the Tribunal Act. Hence, the Legislature contemplated, while conferring the revisional jurisdiction on the Tribunal under Section 76 of the Tenancy Act, that the scope and ambit of the jurisdiction of the Gujarat Revenue Tribunal under Section 76 of the Tenancy Act would be as wide as the scope and ambit of the jurisdiction of the Tribunal under Section 9 of the Tribunal Act and, therefore, the power of review specifically conferred on the Tribunal under Section 17 of the Tribunal Act also is available

while exercising revisional jurisdiction under Section 76 of the Tenancy Act. The language used by the Legislature in Section 17 of the Tribunal Act specifically uses the words "its own decision or order in any case" are wide enough to embrace the decisions rendered by the Tribunal under section 76 of the Tenancy Act as well.

6.3 Even otherwise Regulation 55 of the Bombay Revenue Tribunal Regulations, 1951, framed in exercise of the powers conferred by Section 14 of the Tribunal Act provides for applicability of Civil Procedure Code in matters not provided for in the said Regulations. Hence, even if the power of review is not available under Section 17 of the Tribunal Act, the power of review is certainly available to the Tribunal through the provisions of Section 104 and Order 47 of the Code of Civil Procedure.

7. Having heard the learned counsel for the parties, this Court finds considerable substance in the submission made by the learned counsel for the petitioners that the power of review under Section 17 of the Tribunal Act is available only in respect of cases arising under the enactments specified in the first schedule to the Tribunal Act. The provisions of Section 9 of the Tribunal Act clearly provide that the powers being conferred on the Tribunal to entertain and decide appeals and revisions under the Tribunal Act are only in respect of the enactments specified in the first schedule to the Tribunal Act. Admittedly, the Tenancy Act is not included in the first schedule to the Tribunal Act. Hence, the Tribunal while exercising the powers under the Tribunal Act, cannot deal with the cases arising under the Tenancy Act. Even under the provisions of Section 12 of the Tribunal Act, the Tribunal would not be in a position to entertain appeals or revisions under the Tenancy Act since the Tenancy Act is not one of the enactments in the first schedule. All that Section 12 of the Act does is merely to save the powers of the legislature to confer power on the Tribunal to decide appeals/revisions arising from orders under other enactments and that is how the power to hear revision applications under Section 76 of the Tenancy Act is conferred on the Tribunal by specific provisions of Section 76 of the Tenancy Act. In other words, what Section 12 of the Tribunal Act does is merely to save the powers or functions of the Tribunal conferred upon it or which may be conferred upon it by or under any other law to entertain and decide appeals/revisions or other proceedings. Section 12 of the Tribunal Act does not add to the powers or functions of the Tribunal under any

other law. Hence, if the Tenancy Act does not confer any power of review upon the Tribunal while exercising the revisional power under Section 76 of the Act, Section 12 of the Tribunal Act cannot be invoked to give wider meaning to Section 17 of the Tribunal Act. The words "the Tribunal may review its own decision or order in any case....." merely mean that the Tribunal can review its own decision or order in any case arising under any enactment in the first schedule to the Tribunal Act. If the legislature intended that the Tribunal exercising revisional power under Section 76 of the Tenancy Act could exercise all the powers conferred upon the Tribunal under the Tribunal Act, the wording of sub-section (2) of section 76 of the Tenancy Act would have been quite different. The legislature could and would have simply provided that in deciding applications under Section 76 of the Tenancy Act, the Gujarat Revenue Tribunal shall exercise the same powers and follow the same procedure as are conferred on and prescribed for the Tribunal under Bombay Revenue Tribunal Act, 1957. It is to be noted that the power of review such as one conferred by the provisions of Order 47, Rule 1 of the CPC is a substantive power and is not a mere matter of procedure. The provisions of the Tenancy Act do not confer any such power of review on the Gujarat Revenue Tribunal. The revisional power of the Tribunal under Section 76 of the Tenancy Act itself is narrowly circumscribed. The Tribunal is not to exercise any original jurisdiction, but it merely sits in revision over the orders of the Collector, if the order is contrary to law or if the Collector failed to determine some material issue of law or if there was a substantial defect in procedure or there was failure to take evidence or there was error in appreciating important evidence which has resulted in the mis-carriage of justice. The legislature does not, therefore, appear to have intended to confer further powers as contained in the first proviso to Section 17 of the Tribunal Act which contains grounds of review, analogous to the grounds of review under Order 47 Rule 1 of the CPC. Hence, the contention of the learned counsel for the respondents that the power of review of the Tribunal exercising the revisional powers under Section 76 of the Tenancy Act must be inferred as arising out of the provisions of Section 17 read with Section 12 of the Tribunal Act cannot be accepted.

8. However, that is not the end of the matter as the question posed in this petition must be treated to have been covered by the decision of a Division Bench of this Court in the case of Ram Kirpal vs. Union of India &

Anr., 39(3) GLR 1892. It has been held in the said decision that "as a general rule, a judgment, decree or final order once drawn up and signed, cannot subsequently be altered, varied or amended in any manner by the Court or Tribunal which pronounced it. However, there is a well recognized exception to the said general rule. It is a maxim of law that an act of a Court shall prejudice no man - *actus curiae neminem gravabit*. Every Tribunal has an inherent jurisdiction, apart from statutory jurisdiction to correct any error committed by itself, It can invoke such jurisdiction and can exercise it in an appropriate case when its conscience is aroused and if it considers that without the exercise of such powers, the ends of justice would be frustrated."

(emphasis supplied)

The aforesaid ratio has been laid down by the Division bench after considering the decisions of the Apex Court in the case of J.K. Synthetics vs. Collector of Central Excise, 1996 (6) SCC 92, Satyanarayan Laxminarayan Hegde & Ors. vs. Mallika Arjun B. Tirimela, AIR 1960 SC 137 and Grindlay Bank Ltd. vs. Central Government Industrial Tribunal & Ors., 1980 (Suppl.) SCC 420 as well as the decision of the Apex Court in the case of S. Nagaraj & Ors. vs. State of Karnataka & Anr., JT 1993(5) SC 27.

It is further required to be noted that the Division bench has further made a distinction between substantive review and procedural review. The Division Bench has held that the power of procedural review is inherent in every Tribunal even in the absence of any statutory provision and that it is only for substantive review that a specific statutory provision is required to be inserted in the statute under which the Tribunal is set up or is exercising jurisdiction.

9. It is, therefore, required to be clarified that the expression "review" is used in the two distinct senses, namely, (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal. The principle that the power to

review must be conferred by statute either specially or by necessary implication is inapplicable to decisions of a Judicial Tribunal which is supposed to do complete justice to the parties before it. To extend the principle to decisions rendered by a Judicial Tribunal would indeed lead to untoward and startling results. This general principle is, of course, subject to the rider that such power of even procedural review may be excluded if there is any indication in the statute contrary to the aforesaid general principle. Having examined the scheme of the Tenancy Act, it is clear that there is nothing contrary to the aforesaid general principle to exclude the inherent power of the Tribunal for procedural review.

10. In view of the above discussion, it must be held that while exercising the revisional jurisdiction under Section 76 of the Tenancy Act, the Tribunal has the power of procedural review which inheres in every Tribunal, but it does not have the power of substantive review. The Tribunal, therefore, cannot rehear the matter on merits.

11. It is clarified that this Court has not gone into the merits of the disputes between the parties and the Court has only examined the wider question whether the Tribunal exercising the revisional jurisdiction under Section 76 of the Tenancy Act has the power of reviewing its own decision.

12. In view of the above discussion, it is held that while the Gujarat Revenue Tribunal exercising the powers of revision under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 does not have the power of reviewing its own decision on the basis of any statutory provisions contained in the said Act or in the Bombay Revenue Tribunal Act, 1957, the Tribunal does have the inherent power of procedural review as explained by a Division Bench of this Court in the case of Ram Kirpal vs. Union of India & Anr. 39(3) GLR 1892.

The petition is accordingly dismissed subject to the aforesaid clarification and observations made in this judgment. Rule is discharged with no order as to costs.

Sd/-

May 12, 1999 (M.S. Shah, J.)

At this stage Mr Tushar Mehta, learned counsel for the petitioners prays that the ad-interim relief granted earlier may be continued for two months in order to enable the petitioners to have further recourse in

accordance with law. It is, therefore, directed that the ad-interim relief granted earlier shall continue till 30.6.1999.

Sd/-

May 12, 1999 (M.S. Shah, J.)